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MEMORANDUM FOR THE RECORD

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**Meeting of Aviation Assembly Representatives with Federal Aviation
Administration Officials on "Overflight" Fees
4:00 p.m., Thursday, February 25, 1999**

This meeting, in response to a request to meet by the Aviation Assembly, was held in the Management Operations Center (MOC room) of the FAA Headquarters Building. Participants were as follows:

Federal Aviation Administration

Mr. David Traynham	Assistant Administrator for Policy, Planning & International Aviation
Mr. Carl Schellenberg	Assistant Administrator for Financial Services & Chief Financial Officer
Mr. Randall Fiertz	Manager, Overflight Fee Project
Dr. Woody Davis	Attorney-Advisor

Department of State

Mr. Scott Heckman	Office of Transportation Policy
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Aviation Assembly

Transportation Attaches from eight Embassies:

Mr. Terry Wood	Canada
Mr. Jean-Michel Bour	France
Mr. Pantelis Gassios	Greece
Mr. Kenneth Thompson	Ireland
Mr. Tomomi Tsuchiya	Japan
Mr. Man Hee Han	Korea
Mr. Eduard Syerp	The Netherlands
Mr. Ben Eybergen	The Netherlands
Ms. Patricia Hayes	United Kingdom

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RULES DOCKET

SUMMARY

After initial introductions and opening/welcoming comments by Mr. David Traynham Mr. Carl Schellenberg explained to the Embassy officials the circumstances and events concerning Overflight Fees that had brought FAA to this point in the rulemaking process. He summarized the events of 1997, when the FAA issued an Interim Final Rule (IFR) establishing overflight fees. He noted that some of the affected users had sought a stay of implementation at that time, but that such action had been rejected,

first by the FAA and later by the Court of Appeals for the District of Columbia. Litigation was brought against the rule on multiple accounts by a number of the carriers. On January 30, 1998, the Court of Appeals ruled that the approach taken by the FAA to allocate fixed and common costs among users was value-based and therefore in violation of the governing statute. The IFR was set aside by the Court, all billing of fees was immediately suspended, and the nearly \$40 Million that had then been collected by the FAA was refunded.

Mr. Schellenberg explained that the statutory requirement to implement Overflight Fees was still in effect. He noted that, at the time of the Court decision, the FAA was in the process of developing a new Cost Accounting System (CAS) for internal management purposes. He said FAA decided at that point that it would derive its future Overflight Fees from the new CAS data. He explained that this would allow FAA to use more accurate actual cost data in setting the fees.

While explaining that he could not be very precise at this point as to likely fee levels, Mr. Schellenberg did note that the FAA expected the new fees to be significantly lower than those that had been previously established in 1997. He indicated the current estimated timeline for establishing the new fees as follows:

- Final CAS data for fiscal year 1998 processed and validated by early Summer.
- Proposed fees to be derived based on the CAS data.
- New IFR to be issued by early Fall.
- Public meeting to be held following issuance of the IFR.
- New fees to be effective on or about October 1, 1999.
- Public comment will be obtained.
- Final Rule, addressing all public comments, will then be issued.

Mr. Eduard Syerp and Mr. Jean-Michel Bour expressed dissatisfaction with FAA's plan to establish the Overflight Fees without having engaged in prior consultation with the various foreign governments. They indicated that they had expected that the FAA would consult with the governments before attempting to implement any new schedule of Overflight Fees. Other Assembly members indicated a similar understanding and similar concerns.

Dr. Woody Davis explained that the U.S. could not engage in the type of advance consultation sought by the Embassy officials on the Overflight Fees because of certain limitations of our regulatory process, which does not permit any such consultation once the rulemaking process has officially begun. Dr. Davis pointed out further that the IFR process does provide an opportunity to comment on the Interim Final Rule, and that all such comments received must be considered and addressed by the FAA before publication of a Final Rule. He said the U.S. believes that the process we are required to follow with respect to public comments does accomplish the requirement for consultation, only on different terms than the more customary approach sought by the Assembly members.

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Mr. Bour stated that the 60 days advance notice given by the FAA under the previous IFR, and apparently planned again under the new IFR, was an inadequate amount of time for the users to be able to understand the rule and comment on it, while at the same time preparing for its implementation. Mr. Schellenberg noted that there would be considerable explanatory information released by the FAA at the time the fees are announced, and that everything done to derive the fees will be explained in detail. He also noted that a public meeting would be held, as was done in the first rulemaking, a month or so before the effective date of the IFR.

The meeting was adjourned at 5:05 p.m.

A handwritten signature in black ink, reading "David A. Haushead". The signature is written in a cursive style with a large, sweeping initial "D" and a long, horizontal stroke extending to the right.